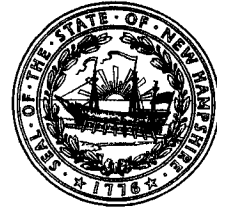




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 25, 2006

Robert Comeau
PO Box 355
Rumney, NH 03266-0355

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 04-109**

Dear Mr. Comeau:

By Notice of Proposed Administrative Fine No. AF 04-109 issued December 22, 2004, the New Hampshire Department of Environmental Services Waste Management Division ("the Division") sought administrative fines totaling \$4,000 against you for alleged violations of RSA 146-C:9, specifically for failing to comply with the requirements for the registration and permitting, and standards for design, installation, operation, maintenance, and monitoring of under-ground petroleum storage facilities at Department of Environmental Services ("DES") UST #0-112582, located at the Ryezack Oil Co. facility ("the Facility"), 1536 Route 25, Rumney, NH ("the Property").

A hearing on this matter was held on June 5, 2006. The hearing was attended by the following persons on behalf of the Division: Attorney Kerry Barnsley, Mr. Lynn Woodard, and Ms. Christie Peshka. You attended the hearing on your own behalf.

Pursuant to RSA 146-C:10, and based on my review of the evidence presented at a hearing held on this matter, I have concluded that a fine of \$4,000 is justified as set forth below:

This decision is based on the following findings of fact, which are supported by the testimony of Division witnesses Lynn Woodard and Christie Peshka, Division Exhibits 1 through 3, and the testimony of Mr. Comeau:

FINDINGS OF FACT

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Robert Comeau is an individual doing business as Ryezack Oil Company having a mailing address of P.O. Box 355, Rumney, NH 03266-0355.
3. Robert Comeau is the registered facility owner of two underground storage tanks ("UST") at the Ryezack Oil Co. facility ("the Facility"), further identified as UST #0-112582, located on real property at 1536 Route 25, Rumney, NH ("the Property").

4. On April 6, 2004, a Division inspector conducted a compliance inspection at the Facility and noted compliance deficiencies which were identified in a report (the "Report") issued to the Facility representative at the time of the inspection.
5. The Report notified the Facility that compliance was to be achieved within 30 days of the date of the inspection and verification of compliance submitted to the Division within 45 days of the date of the inspection. Acknowledgement of receipt of the Report was signed by Jack Toomy on behalf of the Facility.
6. The Report also included a UST Facility Summary of Deficiencies identified at the time of the inspection. Among those deficiencies identified, the Division was not notified that the following were corrected within 45 days after the inspection was performed:
 - a. Required stock inventory records for the 5,000-gallon diesel compartment of the 10,000-gallon split UST (Tank 7) were not maintained;
 - b. The certificate bearing the Facility's tank information was not displayed;
 - c. The spill containment device for the 5,000-gallon diesel compartment of Tank 7 was not maintained in good working order;
 - d. The overfill protection equipment on Tanks 6 and 7 was not properly installed and maintained;
 - e. The leak monitor for Tanks 6 and 7 was not continuously operating and the annual test had not been performed; and
 - f. Corrosion protection for the piping under the diesel dispenser was not installed.
7. On December 22, 2004, the Division filed a Notice of Proposed Administrative Fine No. AF 04-109 ("the Notice"), seeking that fines totaling \$4,000 be imposed upon Robert Comeau by the Commissioner of DES for violations of statutes and rules governing underground storage tank facilities. Pursuant to the return receipt on file in this matter, the Notice was received on December 24, 2004.
8. Specifically, the Notice cited Mr. Comeau for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for the 5,000-gallon compartment of Tank 7 in accordance with RSA 146-C:5 and Env-Wm 1401.11. For this violation, Env-C 607.05(a) specifies a fine of \$500 per requirement not met.
9. Further, the Notice cited Mr. Comeau for violating Env-Wm 1401.21(l) by failing to display and permanently affix a certificate bearing the Facility's tank information. For this violation, Env-C 607.02(b) specifies a fine of \$100.

10. Further, the Notice cited Mr. Comeau for violating Env-Wm 1401.25(a) and (d) by failing to maintain the spill containment device on the 5,000-gallon compartment of Tank 7 in good working order and by failing to properly install and maintain overfill protection equipment on Tanks 6 and 7. For this violation, Env-C 607.05(j) specifies a fine of \$200 per requirement not met or \$400 for the Facility.

11. Further, the Notice cited Mr. Comeau for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for Tanks 6 and 7 and by failing to perform the annual test for proper operation. For this violation, Env-C 607.05(d) specifies a fine of \$1,000 per requirement not met or \$2,000 for the Facility.

12. Finally, the Notice cited Mr. Comeau for violating Env-Wm 1401.33 for failing to install corrosion protection for piping under the diesel dispenser. For this violation Env-C 607.03(f) specifies a fine of \$1,000 per requirement not met.

13. DES notified Mr. Comeau in a letter dated April 14, 2005 that a hearing in this matter had been scheduled, for July 11, 2005, at 1:00 P.M., in Room 110 at 29 Hazen Drive, in Concord, New Hampshire. The letter notified Mr. Comeau of the requirements for submission of exhibit and witness lists, the procedures for requesting that the hearing be rescheduled and that the hearing would be conducted in his absence in accordance with Env-C 204.09.

14. Subsequently, the hearing was postponed until August 29, 2005 at the Presiding Officer's request. The parties met at Mr. Comeau's place of business on August 18, 2005 to discuss the proposed fine and compliance with the UST rules. An outstanding AST fine was also discussed. The parties agreed to continue the hearing and the UST facility was reinspected at Mr. Comeau's request on August 26, 2005. The Motion to Continue filed in this matter was granted on August 22, 2005.

15. Mr. Comeau was present for the reinspection on August 26, 2005, and demonstrated to Division staff that he wanted to cooperate and bring the UST facility into compliance. He stated that Roy Creley of Lakes Region Environmental was going to do the work. Division staff asked for a copy of the contract and was told that one had not been developed yet. The Division asked Mr. Comeau to complete work and achieve compliance within 30 days.

16. On August 31, 2005, DES received payment from Mr. Comeau for a previous administrative fine associated with his AST systems (AF 03-036).

17. Although Mr. Creley has unofficially reported to the Division that the compliance has been achieved at the UST facility, subsequent attempts to contact Mr. Comeau about submitting documentation demonstrating compliance and settling the proposed fine have gone unanswered.

18. DES notified Mr. Comeau in a letter dated May 4, 2006 that a hearing in this matter had been scheduled, for June 5, 2006, at 1:00 P.M., in Room 110 at 29 Hazen Drive, in Concord, New Hampshire. The letter notified Mr. Comeau of the requirements for submission of exhibit and witness lists, the procedures for requesting that the hearing be rescheduled and that the hearing would be conducted in his absence in accordance with Env-C 204.09.

19. Pursuant to the return receipt on file with DES, the Notice was received on May 5, 2006.

20. Mr. Comeau did not dispute that the alleged violations occurred, and did not provide justification for the extended periods of time that the violations were allowed to continue.

Based on these findings of fact and the applicable statutes and administrative rules, the Department makes the following conclusions of law:

Conclusions of Law

1. RSA 146-C authorizes the Department of Environmental Services ("DES") to regulate the installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted New Hampshire Administrative Rules Env-Wm 1401 to set forth the requirements for underground storage facilities by "establishing criteria for registration and permitting, and standards for design, installation, operation, maintenance, and monitoring of such facilities."

2. RSA 146-C:10-a authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense upon any person who violates any provision of RSA 146-C or any rule adopted under the provisions of this chapter. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.

3. The UST systems at the Ryezak Oil Co. facility, identified as UST #0-112582, located on real property at 1536 Route 25 in Rumney, New Hampshire are subject to the requirements of RSA 146-C and Env-Wm 1401.

4. Env-Wm 1401.11(a) requires the owner of an underground storage facility to conduct inventory monitoring for each underground storage tank, and to maintain separate records for each tank and interconnected system.

5. Env-Wm 1401.21(l) requires a certificate which shows all of the information in Env-Wm 1401.21(k), the date of installation, and the regulated substances and percentages by volume of any additives to be displayed so it is visible and permanently affixed on the facility premises.

6. Env-Wm 1401.25(a) requires all underground storage tanks to be equipped with spill containment.

7. Env-Wm 1401.25(d) defines the manner in which the overfill protection devices shall be installed.
8. Env-Wm 1401.31(a) requires leak monitoring equipment and devices to be maintained in good working order at all times to continuously perform their original design function and shall be tested annually for proper operation in accordance with the manufacturer's requirements.
9. Env-Wm 1401.33 requires corrosion protection be installed on regulated piping prior to December 22, 1998.
10. Based on the evidence presented at hearing on June 5, 2006, the Division has proved by a preponderance of evidence that Robert Comeau is responsible for violating the rules identified in paragraphs 4-9.
11. After hearing, having proved by a preponderance of the evidence that Robert Comeau has committed the violations alleged in the Notice, the total fine sought, in the amount of \$4,000 is the appropriate amount and warranted under RSA 146-C:10-a and Env-C 607.

The total assessed fine of \$4,000 shall be paid within 30 days of the date of this decision. Fine payments shall be by certified check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

COMMISSIONER OF ENVIRONMENT SERVICES

By:


Michael P. Nolin, Presiding Officer

cc: Michael P. Nolin, Commissioner
Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, DES Legal Unit
Lynn Woodard, DES WMD
Public Information Officer, DES PIP

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99